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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DOLORES GRANILLO, *et al.*,

Plaintiffs,

v.

FCA US LLC,

Defendant.

Civil Action No. 3:16-cv-153-FLW-DEA

**FCA US LLC'S RESPONSE TO
PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION FOR ATTORNEYS' FEES,
COSTS/EXPENSES, AND AN
INCENTIVE AWARD**

As agreed to by the parties, Defendant FCA US LLC does not object to the request for an award of fees and costs which, in combination, total \$1,255,000. However, in addition to the fee issues previously identified by FCA US, and the issues raised as to the factual content of Plaintiffs' Motion, FCA US feels compelled to comment on certain issues that the Court raised in chambers at the hearing on Plaintiffs' motion seeking fees.

Specifically, FCA US notes that the Court indicated that it had found at least one error in the expense calculations that had been submitted, and that it expected a reduction in the hours claimed to account for work done in another case, for administrative time, and for certain work done by Mr. Lurie. In the supplement in support of the fee motion, Plaintiffs' counsel claim to be accounting for the Court's concerns but, in the end, attempt to justify the exact same amount of fees originally requested by now adding other time in to their fee calculations.

By way of example only, this Court made clear that it would not compensate Plaintiffs' Counsel for work done in the *Oquendo* case. To account for this, in the supplemental filing Mr. Gutman reduces the time he originally submitted to this Court by approximately 75 hours for work he originally claimed in his fee motion. He states that this is the amount of time he spent litigating the *Oquendo* case from start to finish (meeting with his client and getting retained, conducting a background investigation, filing a class action complaint, multiple communications with opposing counsel, filing an amended class action complaint, participating in both the required telephone conference and the preparation of a joint discovery plan, defending against a motion to dismiss with a brief and declarations, and engaging in limited discovery by obtaining at least one written statement from a purported minor who claimed to be a "witness" and producing it). However, Mr. Gutman then adds half of the time he deducted back into his fee request (37.5

hours, *i.e.*, a full week of time), claiming that this is the amount of time it took him to prepare for and attend one hearing that he acknowledges he had a very limited role in. The Capstone firm likewise indicates that its supplemental submission includes a “write-off [of] some of the time that had been originally provided to the Court,” but then acknowledges that they are now making up for this by “captur[ing] additional time billed since the filing of the motion for attorneys’ fees.” *See* ECF #140, p. 17 fn.1.

In *Rose v. Bank of America Corp.*, 2015 WL 1969094, *3 (N.D.Cal. 2015), the court rejected the notion that hours used to calculate a fee award should be increased to account for work done after a fee motion is submitted, noting: “that Class Counsel continues to spend time on this matter is expected since large class action settlements require continuing work with its clients—the class members—and often generate significant post-approval litigation.”

Dated: February 25, 2019

Respectfully submitted,

**McELROY, DEUTSCH, MULVANEY
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